IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.1323 of 2002

T.K.Prasanna Kumar ... Appellant/Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Chennai-600 035.

2.The Superintendent,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Chennai-600 035. ... Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 10.04.2002 made in W.P.No.1441 of 1996. Filed under Article 226 of the Constitution of India praying for issue of a writ of certiorari calling for the records of the respondent leading to the 1st Respondent's Communication dated 27.12.1995 under reference No. V - 4/30820/94 and quash the same.

For Appellant : Mr.Ashok K.Menon for
M/s Menon & Goklaney Associates

For respondents : Mr.S.Kasikumar for
Mr.K.Chelladurai

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 10.04.2002 made in W.P.No.1441 of 1996, in and by which, the learned single Judge, after finding that the petitioner has sub-let his flat allotted by the Tamil Nadu Housing Board, has dismissed the writ petition.

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2. Heard the learned counsel for the appellant as well as the respondents.

3. According to the petitioner/appellant, under letter dated 20.11.1979 in Ref.No.P2/94155/99, Tamil Nadu Housing Board leased out the premises bearing No.10-E, New Tower Block, Nandanam, Madras-600 035 to him. From the date of allotment, he had been staying in the premises along with his sister Smt.Santha Nair, his brother-in-law Sri.K.T.Nair also known as K.Tiruvikraman Nair. While so, he received a communication dated 17.05.1994 from the Chief Revenue Officer and the competent authority of the Tamil Nadu Housing Board stating that during the course of inspection by the Housing Board officials, it was seen that one K.T.Nair and his family members were residing there and that the petitioner had violated the conditions of the allotment and the lease agreement executed by him by subletting the portion to somebody else. Pursuant to the show cause notice, the petitioner submitted his reply by letter dated 08.06.1994 stating that he had not sub-let the flat to anybody else and he was only occupying the same with his sister and brother-in-law. Thereafter, he received another communication dated 01.09.1994 calling upon him to execute a fresh lease agreement for 11 months from 02.11.1993 based on the resolution of the Tamil Nadu Housing Board. Subsequent to the same, the petitioner has received another communication dated 10.10.1994 stating that the explanation given by him dated 08.06.1994 was not satisfactory and the allotment of the flat was cancelled and he has to evict the flat within 30 days as per Section 84(1) of the Tamil Nadu Housing Board Act, 1961. On receipt of the said proceedings, he made further representation explaining his earlier stand. Since the same was not accepted by the respondents, the petitioner has received another communication on 24.08.1995 calling upon him to vacate and hand over possession within 30 days from the date of receipt of the same. Questioning the said letter/notice, the petitioner has filed the writ petition. The learned single Judge, after finding that the premise was occupied by one K.T.Nair and his family members and there was no material to show that the petitioner and his family members alone have been in occupation of the premises, has rejected the stand taken by the petitioner and dismissed the writ petition.

4. The learned counsel for the appellant has brought to our notice the allotment order dated 20.11.1979, reply by the petitioner on various dates, family card as well as the final order passed by the respondents directing him to vacate the premises within 30 days.

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5. We have verified all those details.

6. On going through the family card of the year 1993-1998, which contains the names of the petitioner, his sister, her husband and children of his sister, we are unable to accept the conclusion arrived at by the learned single Judge. Even otherwise, from the beginning, it was the consistent stand of the petitioner that his sister and his family members were residing with him. The categorical statements in the form of various reply/representation coupled with the details available in the family card clearly prove the case of the petitioner. It is also clear that there is no acceptable material to show that the petitioner had sub-let the flat to third parties as claimed by the respondents. All those relevant aspects have not been adverted to by the learned single Judge and there is an error in confirming the order of the respondents. We are satisfied that there is no material to show that the petitioner had sub-let the flat to third parties and we are of the view that the materials furnished by him would clearly show that he is residing along with his sister and her family members.

7. In the light of what is stated above, we are unable to agree with the conclusion arrived at by the learned single Judge. Consequently, the order of the learned single Judge is set aside and the writ appeal is allowed. No costs.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai, Chennai-600 035.

2.The Superintendent,
Tamil Nadu Housing Board,
No.331, Anna Salai, Chennai-600 035.

+ 1 cc to Mr. K. Chelladurai, Advocate SR No. 2955
+ 2 ccs to M/s. Menon & Goklaney Advocates SR No. 2980

GM(CO)
SR/29.1.2007

W.A.No.1323 of 2002

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